

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DLJ MORTGAGE CAPITAL, INC.,	:	
	:	
Plaintiff,	:	
	:	
-against-	:	07 Civ. 1418 (HB)
	:	
SUNSET DIRECT LENDING, LLC, SUNSET	:	
MORTGAGE CO., L.P. and THE SUNSET	:	
COMPANIES L.P.,	:	
	:	
Defendants.	:	
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**AFFIDAVIT OF BRUCE S. KAISERMAN IN SUPPORT OF
PLAINTIFF DLJ MORTGAGE CAPITAL, INC.'S PROPOSED
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

BRUCE S. KAISERMAN, being duly sworn, deposes and says:

1. I am a Vice President of DLJ Mortgage Capital, Inc. (hereinafter "DLJMC" or "plaintiff"), and have knowledge of the facts and circumstances surrounding this action. I submit this affidavit pursuant to Magistrate Judge Theodore H. Katz's October 11, 2007 Order concerning the damages to be awarded based on the default of defendants Sunset Direct Lending, LLC ("Sunset Direct"), Sunset Mortgage Co., L.P. ("Sunset Mortgage") and The Sunset Companies L.P., in the above-captioned matter.

2. Plaintiff DLJMC is a corporation organized and existing under the laws of the state of Delaware. DLJMC is a purchaser of mortgage loans and maintains its principal place of business in New York, New York.

3. Defendant Sunset Direct is a limited liability company organized and existing under the laws of the state of Delaware. Upon information and belief, Sunset Direct is a mortgage banker and maintains its principal place of business in Lake Oswego, Oregon.

4. Defendant Sunset Mortgage is a limited partnership organized and existing under the laws of the state of Pennsylvania. Upon information and belief, Sunset Mortgage is a mortgage banker and maintains its principal place of business in Chadds Ford, Pennsylvania.

5. Defendant The Sunset Companies L.P. is a limited partnership organized and existing under the laws of the state of Pennsylvania with its principal place of business located in Chadds Ford, Pennsylvania.

The Loan Purchase Agreements

6. On October 1, 2004, DLJMC and Sunset Mortgage entered into a Mortgage Loan Purchase and Interim Servicing Agreement (the "Sunset Mortgage Purchase Agreement") (Attached hereto as Exhibit A is a true and correct copy of the Sunset Mortgage Purchase Agreement).

7. Under the Sunset Mortgage Purchase Agreement, Sunset Mortgage would originate and sell mortgage loans to DLJMC in accordance with the terms of the Sunset Mortgage Purchase Agreement.

8. On February 1, 2006, DLJMC and Sunset Direct entered into a Seller's Purchase, Warranties and Interim Servicing Agreement (the "Sunset Direct Purchase Agreement") (Attached hereto as Exhibit B is a true and correct copy of the Sunset Direct Purchase Agreement).

9. Under the Sunset Direct Purchase Agreement, Sunset Direct would originate

and sell mortgage loans to DLJMC in accordance with the terms of the Sunset Direct Purchase Agreement.

**Sunset Direct's and Sunset Mortgage's Obligations to
Repurchase Early Payment Default Loans**

The Sunset Direct Early Payment Default Loans

10. Pursuant to Section 3.05 of the Sunset Direct Purchase Agreement, entitled "Repurchase of Mortgage Loans with Early Payment Defaults," Sunset Direct agreed to repurchase from DLJMC certain mortgage loans as to which there occurred payment defaults within three months after the Closing Date (as defined in the Sunset Direct Purchase Agreement) for such Mortgage Loans. Section 3.05 of the Sunset Direct Purchase Agreement specifically provides as follows:

If (a) a Mortgagor is thirty (30) days or more delinquent with respect to any of the first three (3) Monthly Payments due to [DLJMC] on the related Mortgage Loan immediately following the applicable Closing Date . . . [Sunset Direct], at [DLJMC's] option, shall promptly repurchase such Mortgage Loan from [DLJMC] within five (5) Business Days' of receipt of written notice from [DLJMC], in accordance with the procedures set forth in Section 3.03 hereof, however, any such repurchase shall be made at the Repurchase Price.

11. Further, pursuant to Section 3.05 of the Sunset Direct Purchase Agreement, as amended on February 1, 2006, Sunset Direct agreed to repurchase from DLJMC certain Sub Prime Mortgage Loans as to which there occurred payment defaults within three months after the Closing Date (as defined in the Sunset Direct Purchase Agreement) for such Sub Prime Mortgage Loans. Section 3.05 of the Sunset Direct Purchase Agreement, as amended on February 1, 2006, specifically provides as follows:

If (a) a Mortgagor is thirty (30) days or more delinquent with respect to any of the first three (3) Monthly Payments due to [DLJMC] on the related Sub Prime Mortgage Loan immediately following the applicable Closing Date . . . [Sunset Direct], at [DLJMC's] option, shall

promptly repurchase such Sub Prime Mortgage Loan from [DLJMC] within five (5) Business Days' of receipt of written notice from [DLJMC], in accordance with the procedures set forth in Section 3.03 hereof, however, any such repurchase shall be made at the Repurchase Price.

12. Certain of the Mortgage Loans and Sub Prime Mortgage Loans that DLJMC purchased from Sunset Direct pursuant to the Sunset Direct Purchase Agreement were thirty days or more delinquent within three months after the Closing Date (hereafter these loans are collectively referred to as the "Sunset Direct Early Payment Default Loans").

13. Accordingly, commencing no later than July 25, 2006, and continuing through January 17, 2007, DLJMC requested that Sunset Direct repurchase the Sunset Direct Early Payment Default Loans pursuant to Section 3.05 of the Sunset Direct Purchase Agreement (Attached hereto as Exhibit C are true and correct copies of the repurchase requests issued to Sunset Direct by DLJMC between July 25, 2006 and January 17, 2007).

14. To date, Sunset Direct has refused and failed to repurchase the Sunset Direct Early Payment Default Loans from DLJMC notwithstanding Sunset Direct's express and unambiguous obligation to do so pursuant to the terms of the Sunset Direct Purchase Agreement.

15. The amount due to repurchase the Sunset Direct Early Payment Default Loans, as of November 7, 2007, is \$18,394,213.34. (Attached hereto as Exhibit D is a schedule setting forth the calculation of the amounts owed to DLJMC as of November 7, 2007).

The Sunset Mortgage Early Payment Default Loans

16. Pursuant to Section 8.04 of the Sunset Mortgage Purchase Agreement, entitled "Early Payment Default," Sunset Mortgage agreed to repurchase from DLJMC certain mortgage loans as to which there occurred payment defaults within a certain number of

months after the Closing Date (as defined in the Sunset Mortgage Purchase Agreement) for such Mortgage Loans. Section 8.04 of the Sunset Mortgage Purchase Agreement specifically provides as follows:

In the event that, (i) the related Mortgagor becomes thirty (30) days or more delinquent with respect to the Mortgage Loan's first three (3) Monthly Payments due to [DLJMC] following the applicable Closing Date, (ii) the related Mortgagor is thirty (30) days delinquent with respect to a Mortgage Loan's fourth Monthly Payment due following the applicable Closing Date and fails to make the next succeeding Monthly Payment due within thirty (30) days of its Due Date . . . (each, an "Early Payment Default Mortgage Loan"), then upon five (5) Business Days' notice to [Sunset Mortgage], [Sunset Mortgage] shall immediately repurchase each such Mortgage Loan from [DLJMC] at the Repurchase Price and in the manner set forth in Subsection 8.03.

17. Certain of the Mortgage Loans that DLJMC purchased from Sunset Mortgage pursuant to the Sunset Mortgage Purchase Agreement were Early Payment Default Mortgage Loans as defined under Section 8.04 of the Sunset Mortgage Purchase Agreement (hereafter these loans are collectively referred to as the "Sunset Mortgage Early Payment Default Loans").

18. Accordingly, commencing no later than March 18, 2005, and continuing through July 31, 2006, DLJMC requested that Sunset Mortgage repurchase the Sunset Mortgage Early Payment Default Loans pursuant to Section 8.04 of the Sunset Mortgage Purchase Agreement. (Attached hereto as Exhibit E are true and correct copies of the repurchase requests issued to Sunset Mortgage by DLJMC between March 18, 2005 and July 31, 2006).

19. To date, Sunset Mortgage has refused and failed to repurchase the Sunset Mortgage Early Payment Default Loans from DLJMC notwithstanding Sunset Mortgage's

express and unambiguous obligation to do so pursuant to the terms of the Sunset Mortgage Purchase Agreement.

20. The amount due to repurchase the Sunset Mortgage Early Payment Default Loans, as of November 7, 2007, is \$2,761,292.48. (Attached hereto as Exhibit F is a schedule setting forth the calculation of the amounts owed to DLJMC as of November 7, 2007).

**Sunset Direct's and Sunset Mortgage's Obligations to
Repurchase Premium Recapture Loans**

The Sunset Direct Premium Recapture Loans

21. Pursuant to Section 3.06 of the Sunset Direct Purchase Agreement, as amended on February 1, 2006, Sunset Direct agreed that for any Sub Prime Mortgage Loans (as defined in the Sunset Direct Purchase Agreement) that are prepaid in full during the first year after the related Closing Date (as defined in the Sunset Direct Purchase Agreement), Sunset Direct would, within thirty (30) days of such prepayment in full, reimburse DLJMC for the purchase premium paid pursuant to a formula set forth in Section 3.06 of the Sunset Direct Purchase Agreement.

22. Certain of the Sub Prime Mortgage Loans that DLJMC purchased from Sunset Direct pursuant to the Sunset Direct Purchase Agreement were prepaid in full during the first year after the related Closing Date (hereafter these loans are collectively referred to as the "Sunset Direct Premium Recapture Loans").

23. Accordingly, commencing no later than August 25, 2006, and continuing through January 11, 2007, DLJMC requested that Sunset Direct reimburse DLJMC for the purchase premium paid with respect to the Sunset Direct Premium Recapture Loans pursuant to Section 3.06 of the Sunset Direct Purchase Agreement. (Attached hereto as Exhibit G are

true and correct copies of the repurchase requests issued to Sunset Direct by DLJMC between August 25, 2006 and January 11, 2007).

24. To date, Sunset Direct has refused and failed to reimburse DLJMC for the purchase premium paid for the Sunset Direct Premium Recapture Loans notwithstanding Sunset Direct's express and unambiguous obligation to do so pursuant to the terms of the Sunset Direct Purchase Agreement.

25. The amount due to repurchase the Sunset Direct Premium Recapture Loans, as of November 7, 2007, is \$84,659.68. (Attached hereto as Exhibit H is a schedule setting forth the calculation of the amounts owed to DLJMC as of November 7, 2007).

The Sunset Mortgage Premium Recapture Loans

26. Pursuant to Section 8.05 of the Sunset Mortgage Purchase Agreement, entitled "Premium Recapture," Sunset Mortgage agreed that for any loans that are prepaid in full during the three (3) month period from and after the related Closing Date (as defined in the Sunset Mortgage Purchase Agreement), Sunset Mortgage would, within thirty (30) days of such prepayment in full, reimburse DLJMC for the purchase premium paid pursuant to a formula set forth in Section 8.05 of the Sunset Mortgage Purchase Agreement.

27. Certain of the Mortgage Loans that DLJMC purchased from Sunset Mortgage pursuant to the Sunset Mortgage Purchase Agreement were prepaid in full during the three month period from and after the Closing Date (hereafter these loans are collectively referred to as the "Sunset Mortgage Premium Recapture Loans").

28. On May 25, 2006, DLJMC requested that Sunset Mortgage reimburse DLJMC for the purchase premium paid with respect to the Sunset Mortgage Premium Recapture Loans pursuant to Section 8.05 of the Sunset Mortgage Purchase Agreement. (Attached

hereto as Exhibit I is a true and correct copy of the May 25, 2006 repurchase request issued to Sunset Mortgage by DLJMC).

29. To date, Sunset Mortgage has refused and failed to reimburse DLJMC for the purchase premium paid for the Sunset Mortgage Premium Recapture Loans notwithstanding Sunset Mortgage's express and unambiguous obligation to do so pursuant to the terms of the Sunset Mortgage Purchase Agreement.

30. The amount due to repurchase the Sunset Mortgage Premium Recapture Loans, as of November 7, 2007, is \$5,545.00. (Attached hereto as Exhibit J is a schedule setting forth the calculation of the amounts owed to DLJMC as of November 7, 2007).

**Sunset Direct's and Sunset Mortgage's Obligations to
Repurchase Breach of Representation and Warranty Loans**

The Sunset Direct Breach of Representation and Warranty Loan

31. Section 3.03 of the Sunset Direct Purchase Agreement provides that in the event Sunset Direct were to breach any of the representations and warranties set forth in Section 3.02 of the Sunset Direct Purchase Agreement, that upon discovery of such a breach by Sunset Direct or DLJMC that materially and adversely affects the value of the related Mortgage Loan or the interest of DLJMC in the related Mortgage Loan, the party discovering such breach shall give prompt written notice to the others. Further, Sunset Direct would have a period of sixty (60) days from the earlier of the breach's discovery or its receipt of notice of any such breach within which to correct or cure such breach. If such breach was not corrected or cured within the sixty (60) day period, Sunset Direct was obligated, at DLJMC's option, either to repurchase the Mortgage Loan at the Repurchase Price or substitute a Mortgage Loan for the Defective Mortgage Loan.

32. One of the Mortgage Loans purchased by DLJMC from Sunset Direct breached one of the representations and warranties set forth in Section 3.02 of the Sunset Direct Purchase Agreement (hereafter this loan is referred to as the “Sunset Direct Breach of Representation and Warranty Loan”).

33. On October 26, 2006, DLJMC requested, pursuant to Section 3.03 of the Sunset Direct Purchase Agreement, that Sunset Direct repurchase the Sunset Direct Breach of Representation and Warranty Loan from DLJMC. (Attached hereto as Exhibit K is a true and correct copy of the October 26, 2006 repurchase request issued to Sunset Direct by DLJMC).

34. To date, Sunset Direct has refused and failed to repurchase the Sunset Direct Breach of Representation and Warranty Loan from DLJMC notwithstanding Sunset Direct’s express and unambiguous obligation to do so pursuant to the terms of the Sunset Direct Purchase Agreement.

35. The amount due to repurchase the Sunset Direct Breach of Representation and Warranty Loan, as of November 7, 2007, is \$296,873.48. (Attached hereto as Exhibit L is a schedule setting forth the calculation of the amounts owed to DLJMC as of November 7, 2007).

The Sunset Mortgage Breach of Representations and Warranties Loans

36. Section 8.03 of the Sunset Mortgage Purchase Agreement provides that in the event Sunset Mortgage were to breach any of the representations and warranties set forth in Section 8.02 of the Sunset Mortgage Purchase Agreement, that upon discovery of such a breach by Sunset Mortgage or DLJMC that materially and adversely affects the value of the related Mortgage Loan or the interest of DLJMC in the related Mortgage Loan, the party

discovering such breach shall give prompt written notice to the others. Further, Sunset Mortgage would have a period of sixty (60) days (or thirty (30) days with respect to a breach of Subsections 8.02(g), (pp), (qq), (tt) or (uu)) from the earlier of the breach's discovery or its receipt of notice of any such breach within which to use its best efforts promptly to cure such breach. If such breach was not cured within the sixty (60) day period, Sunset Mortgage was obligated, at DLJMC's option, to repurchase the Mortgage Loan at the Repurchase Price.

37. Certain of the Mortgage Loans purchased by DLJMC from Sunset Mortgage breached certain of the representations and warranties set forth in Section 8.02 of the Sunset Mortgage Purchase Agreement (hereafter these loans are collectively referred to as the "Sunset Mortgage Breach of Representations and Warranties Loans").

38. On December 16, 2005, DLJMC requested that Sunset Mortgage repurchase the Sunset Mortgage Breach of Representations and Warranties Loans from DLJMC. (Attached hereto as Exhibit M is a true and correct copy of the repurchase request issued to Sunset Direct by DLJMC).

39. To date, Sunset Mortgage has refused and failed to repurchase the Sunset Mortgage Breach of Representations and Warranties Loans from DLJMC notwithstanding Sunset Mortgage's express and unambiguous obligation to do so pursuant to the terms of the Sunset Mortgage Purchase Agreement.

40. The amount due to repurchase the Sunset Mortgage Breach of Representations and Warranties Loans, as of November 7, 2007, is \$268,366.62. (Attached hereto as Exhibit N is a schedule setting forth the calculation of the amounts owed to DLJMC as of November 7, 2007).

Dated: New York, New York
November 9, 2007

Bruce S. Kaiserman
BRUCE S. KAISERMAN

Sworn to before me this
12th day of November, 2007

Kyle Frankiewicz
Notary Public

KYLE FRANKIEWICH
Notary Public, State of New York
NO. 01FR6162952
Qualified in Bronx County
Commission Expires March 19, 2011

